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FISCAL IMPACT STATEMENT

LS 6137

BILL NUMBER: SB 72

NOTE PREPARED: Jan 26, 2012

BILL AMENDED: Jan 26, 2012

SUBJECT: Abortion Matters.

FIRST AUTHOR: Sen. Holdman

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill requires the Indiana State Department of Health (ISDH) to develop written materials to be provided to a pregnant woman setting forth certain information relating to abortion. The bill allows the ISDH to charge a fee to a provider who requests the materials to defray the cost of printing and distributing the materials.

The bill specifies that only a physician who meets certain conditions may administer to a pregnant woman an abortion-inducing drug, and sets forth the procedure the physician must follow. The bill establishes a Class A misdemeanor for a violation concerning distribution of an abortion-inducing drug.

The bill establishes a pilot program in Allen County until July 1, 2015, concerning physical plant requirements for abortion clinics. It requires the ISDH to: (1) inspect the Allen County abortion clinics at least one time per year during the pilot program; and (2) report to the Health Finance Commission (HFCO) during the 2014 legislative interim concerning the pilot program.

Effective Date: July 1, 2012.

Explanation of State Expenditures: (Revised) *Health Finance Commission:* The HFCO has 24 legislative members, consisting of the members of the Senate Health and Provider Services Committee and the members of the House of Representatives Public Health Committee. The HFCO operates under the policies governing study committees adopted by the Legislative Council. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$16,500 per interim for committees with more than 16 members. The HFCO should be able to add this study to their plan of work within the likely

committee budget.

Penalty Provision: The bill establishes a Class A misdemeanor for a violation concerning distribution of an abortion-inducing drug.

(Revised) *Pilot Program for Physical Plant Requirements:* The bill establishes a pilot program in Allen County and specifies physical plant requirements that a licensed abortion clinic must meet. It specifies that licensed abortion clinics in Allen County would no longer be exempt from the current ISDH licensure rules concerning specific physical plant requirements. Any clinic in Allen County which does not meet physical plant specifications by January 1, 2013, may require additional inspections by the ISDH to ascertain noncompliance prior to license revocation.

(Revised) Additionally, each party that has a license revoked due to noncompliance would be entitled to the due process procedure required by the Administrative Orders and Procedures Act. Each party is entitled to an administrative hearing and an appeal panel if the decision is appealed. A decision by the appeals panel may then be reviewed by the judicial system. The ISDH should be able to accommodate an administrative hearing and an appeal panel within the current level of resources available to agency.

(Revised) *Pilot Program Annual Inspection Requirement:* The fiscal impact of the annual survey provision in the pilot program would depend upon whether a clinic meets the physical plant requirements specified in the bill. If clinics continue to maintain licensure, the ISDH would have a small increase in survey workloads as explained below. If a clinic cannot meet the physical plant requirements, the ISDH may have additional inspections to ascertain noncompliance prior to license revocation and then would realize a subsequent decrease in survey workloads.

(Revised) ISDH reports that due to the increase in the number of acute care facilities, the number of survey staff is currently operating above capacity and that an increase in survey hours would result in other surveys being delayed or would require additional staff. The impact of the pilot program would be limited, expiring on July 1, 2015.

Development of Written Materials: An estimate based on the experience of the Texas Department of State Health Services in implementing a similar requirement indicates that approximately \$5,100 to \$20,100 may be necessary for the ISDH to develop the required written information and post it to the ISDH web page. If acceptable color photographs or drawings can be used at no cost, the cost may be approximately \$5,100. The ISDH may charge providers who request the materials to defray the cost of printing and distributing the materials to the providers.

The ISDH reverted \$7,085,999 to the state General Fund at the end of FY 2011. The additional funds and resources required could be supplied through existing staff and resources currently budgeted in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

Additional Details: The bill requires specified written information to be developed by the ISDH that is to be provided as a part of the informed consent documentation to be given to a pregnant woman. The bill requires the written information be available on the ISDH web site. The information to be in the document includes the following: scientific information regarding the development of a fetus, including color pictures of every two

weeks of gestational age; medically accurate information regarding the medical risks associated with abortion and childbirth; information regarding assistance for pregnancy and childbirth; information regarding a biological father's obligation to pay child support; and information regarding telephone 211 dialing for accessing human services and the types of services available through the 211 service. The ISDH currently provides links to various web sites that provide the required information and more at: <http://www.in.gov/isdh/25199.htm>

The state of Texas enacted a similar requirement in 2003. The Texas Department of State Health Services estimated that 160 hours were used to assemble the initial document with the required information. Texas personnel suggested that by using the Texas template that the ISDH could reduce the amount of time required to assemble all the required information. If 160 hours were required to assemble the information, and write the document, using an average total cost of \$32 per hour, assembling a booklet would be anticipated to cost approximately \$5,100. The ISDH could potentially contract for this work if no in-house staff is available.

The bill requires that the ISDH is to include objective scientific information concerning the probable anatomical and physiological characteristics of a fetus every two weeks of gestational age and must include color pictures that are available at no cost or low cost. The Texas Department of State Health Services reported that the color photographs used to illustrate the required two-week development phases of the embryo and fetus are copyrighted and cost \$15,000 for the original version. The availability of other drawings or photographs that meet the requirements of the bill is not known at this time. Web searches for the required series of developmental images show copyrighted information.

The bill requires the availability of written documents, so assuming that the ISDH would develop a document and provide it in a print-ready format via the ISDH website, the state would have no other printing or distribution costs. Providers would be responsible for printing copies of the material in color to be given as a part of the informed consent requirements. If the ISDH chooses to print the document, providers may be charged to cover the costs of printing and shipping.

Explanation of State Revenues: *Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

(Revised) *Pilot Program for Physical Plant Requirements:* The bill may reduce the amount of fees collected after July 1, 2013, for abortion clinic licensure to the extent that a currently operating clinic in Allen County cannot meet the physical plant requirements specified in the statute and regulations.

Explanation of Local Expenditures: *Penalty Provision:* A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: ISDH.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: http://www.accessdata.fda.gov/drugsatfda_docs/label/2005/020687s013lbl.pdf
SBA General Fund Reversion Report - Detail FY 2011.

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